

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BIG GUY'S PINBALL, LLC,

Plaintiff,

Civil Action No. 2:14-cv-14185-VAR-RSW

v.

Hon. Victoria A. Roberts
United States District Judge

JIMMY LIPHAM,

Defendant.

Hon. Laurie J. Michaelson
United States Magistrate Judge

Robert A. Farr, Jr.
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**AFFIDAVIT OF JIMMY LIPHAM IN SUPPORT OF DEFENDANT'S
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION, FOR
IMPROPER VENUE, AND FOR FAILURE TO STATE A CLAIM UP ON WHICH
RELIEF CAN BE GRANTED, AND MOTION TO TRANSFER VENUE**

Barrow County)
) ss.
State of Georgia)

BEFORE THE UNDERSIGNED personally appeared Jimmy Lipham, who on oath
deposes and states:

1. My name is Jimmy Lipham. I am a resident of the State of Georgia. I am an
Application Developer at Georgia Gwinnett College.

2. I have never visited or spent any time in the State of Michigan.
3. I have never transacted business in or with the State of Michigan, either in a continuous and systematic way, or otherwise.
4. I have no real estate, nor any interest in real estate, in the State of Michigan. I have never had any such interest in the past.
5. I have no bank accounts in the State of Michigan. Nor have I ever in the past.
6. I do not own any shares in any Michigan-incorporated companies. Nor have I held such shares in the past.
7. I have never traveled to or visited the State of Michigan.
8. I have no contacts, ties, or relations, with or to the State of Michigan.
9. All documents, witnesses or materials potentially germane to the allegations to the Complaint, of which I am personally aware – other than those already furnished by the Plaintiff and therefore available independent of geography – are located in Georgia, not in Michigan.
10. Georgia is by far a more convenient forum for me, as well as for parties and witnesses, than Michigan. It would present a considerable financial hardship for me to have to litigate in Michigan, in an inconvenient forum.
11. I am personally familiar with several Free Software licenses, including the GNU General Public License (“GPL”), and the GNU Lesser General Public License (“LGPL”). In particular, I am aware of the requirement that those who make derivative works based on prior works released and available under such licenses, “give back” to the Free Software community, by releasing the modified code under the same licenses.

12. QEMU is a Free Software project that enables one computer to emulate another kind of computer. The code for QEMU is released under the GPL and the LGPL, thus requiring that other projects based on QEMU, or derivatives of QEMU, also to be released as Free Software.

13. “Grep” is a command in variants of the UNIX operating system, including the GNU/Linux operating system, that compares a file with a text string. The command stands for “globally search for a regular expression and print.”

14. QEMU is written in such a way, that when the source code is compiled into an executable, the executable still contains identifiable regular expressions (text strings) that make the executable identifiable using grep, as either QEMU, or a derivative work of QEMU.

15. For instance, attached as Exhibit A is a true and correct screenshot of running a grep on compiled source code of QEMU, looking for the string “QEMU.”

16. I also separately obtained a copy of “Nucore” – specifically, Nucore211release.tar.gz – for purposes of analysis in the defense of this lawsuit. I did not obtain any proprietary ROM images, that would separately be necessary, in order actually to emulate a pinball machine, using Nucore.

17. Attached as Exhibit B is a true and correct screenshot of a grep for “QEMU” on the compiled executable of “Nucore.”

18. Based on the output of these analyses of the compiled source code, not only is it reasonable to conclude that Nucore is almost certainly a derivative work of QEMU, but the probability of these results just happening by accident, and not as a result of a derivative work, is vanishingly small.

19. Accordingly, I can only conclude that the very act of copying and making any public release or sale of compiled Nucore code, by Big Guys Pinball, necessarily would have obligated the Plaintiff to release Nucore under the GPL, LGPL, or both.

20. Additionally, it has come to my attention that the Plaintiff publicly announced on August 29, 2012, that Nucore was being pulled off the market. The posting announcing the withdrawal of this software from further sales, is found at <https://groups.google.com/forum/#!topic/rec.games.pinball/UpEv8keO6UM> and states as follows:

Nucore users,

Don and I would like to start off by thanking you for your support of the Nucore project for the last 6 years. When Don and I first talked about creating a replacement for the original pinball 2000 computer we never thought we would end up where we are. Recently, a few variables changed in the Nucore equation. Due to these changes Don and I decided to suspend sales of Nucore. We're calling this a suspension because we plan on continuing Nucore in the future. How far into the future is unknown but we will certainly let you know when it's back. We will still provide service to existing Nucore users including hardware repair for the USB board and audio amp. Pinball Life has limited availability of base units, audio amps, and cases.

Nucore was a lot of work and Don and I often wondered if it would be worth all of the pain. I certainly was and again we would like to thank our customer for making it all possible.

Chuck Hess

Don Weingarden

Big Guys Pinball

21. Additionally, legal counsel for the Plaintiff, kindly has confirmed that the Plaintiff has not at any time, since that announcement, resumed any sales of Nucore:

From: Robert Farr [mailto:rfarr@rfarrlaw.com]

Sent: Thursday, November 06, 2014 12:33 PM

To: Eric Grimm

Subject: RE: Big Guys Pinball / GPL + LGPL

Mr. Grimm,

Nucore was never rereleased by BGP after that announcement.

Robert Farr

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22. Although I am not commenting at this time on the allegations in the Complaint, even assuming for the sake of argument that they are true, the Nucore source code and executable are obligated to be released under Free Software licenses, anyway.

23. Moreover, I have not received one penny of remuneration or profit or financial benefit, based on anything alleged in the Complaint in this case.

24. And, beyond that, even assuming for argument's sake, that everything in the Complaint is true, still all the allegations on their face relate to events that allegedly happened after sales of Nucore by Big Guys Pinball, already were suspended.

25. In this case, I do not understand or believe, or have any reason to believe, that any allegations in the Complaint involve any act of copyright infringement whatsoever (by me at least; BGP obviously has violated both the copyright laws and well-known and well-understood computer software licenses). There is no possibility of intent to infringe, obviously, since there is no belief – and no reason to believe – that any violation of the Copyright Act is even alleged in the Complaint.

26. Accordingly, in contrast to the intentional harm purposefully directed at a specific individual in California, in Calder v. Jones, 465 U.S. 783 (1984) – here, even assuming that the factual allegations in the Complaint are all true – the only possible intent could have been the

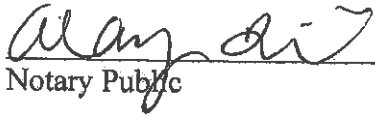
intent to redress harm by Big Guys Pinball directed at the entire Free Software community, rather than to inflict illegal harm on BGP in any way.

27. Moreover, I have quite a bit of difficulty seeing how any harm at all could befall BGP, when the only alleged actions appearing in the Complaint, necessarily post-dated the withdrawal of Nucore, from any further sales in the market, which withdrawal has continued to this day, to the best of my knowledge and information. Certainly, under the actual facts, no possible harm could actually have been intended, except by BGP, itself

FURTHER AFFIANT SAYETH NOT.


Jimmy Liphart

Subscribed and sworn to before me, this 6 day of January, 2015.


Notary Public

ALAYNA DANIELL
NOTARY PUBLIC
COBB COUNTY GA
MY COMMISSION EXPIRES 11/6/17

My commission expires: 11/6/17

CERTIFICATE OF SERVICE

I certify that the foregoing Affidavit of Jimmy Lipham, is being filed through the Court's Electronic Case Filing (ECF) system, on January 7, 2015. The motion that it supports is expected to be filed prior to the deadline for filing such motions. The ECF system will automatically transmit a copy of said affidavit to all counsel of record.

Respectfully submitted,

Dated: January 7, 2015

/s/ Eric C. Grimm
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